

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 224

July 22, 1998, 10:05 p.m.
Page S-8770 Temp. Record

COMMERCE-JUSTICE-STATE/Fines, Jail for Owners of Guns Taken by Juveniles

SUBJECT: Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for fiscal year 1999 . . . S. 2260. Craig motion to table the Durbin amendment No. 3260.

ACTION: MOTION TO TABLE AGREED TO, 69-31

SYNOPSIS: As reported, S. 2260, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for fiscal year 1999, will provide a total of \$33.239 billion in new budget authority, which is \$1.115 billion more than appropriated for fiscal year (FY) 1998 and is \$3.647 billion less than requested. The bill contains large spending increases for various law enforcement activities.

The Durbin amendment would make it a Federal crime punishable by a fine of up to \$10,000 and 1 year imprisonment to have one's firearm taken without one's permission by a juvenile (under the age of 18 years) and exhibited in a public place or used to kill or injure another person. The penalty would not apply: if the firearm had a gun safety device or was in a secure gun storage device; if the juvenile obtained the gun for a lawful act of self-defense or defense of one or more others; if the juvenile took the gun from a law enforcement officer who was performing his or her official duties; if the owner of the gun had no reasonable expectation that a juvenile was likely to be present on the premises on which the firearm was kept; or if the juvenile obtained the firearm as a result of an unlawful entry.

Debate was limited by unanimous consent. After debate, Senator Craig moved to table the Durbin amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The Durbin amendment is a "blame the victim" proposal. When a gun is taken from someone without permission (in the vast majority of circumstances, we are talking about a gun being stolen by a teenager) and then is used in the commission of a crime, or is

(See other side)

YEAS (69)			NAYS (31)			NOT VOTING (0)	
Republicans (53 or 96%)	Democrats (16 or 36%)		Republicans (2 or 4%)	Democrats (29 or 64%)		Republicans (0)	Democrats (0)
Abraham	Hutchison	Baucus	Chafee	Akaka	Landrieu		
Allard	Inhofe	Bingaman	DeWine	Biden	Lautenberg		
Ashcroft	Jeffords	Breaux		Boxer	Levin		
Bennett	Kempthorne	Bryan		Bumpers	Lieberman		
Bond	Kyl	Cleland		Byrd	Mikulski		
Brownback	Lott	Conrad		Dodd	Moseley-Braun		
Burns	Lugar	Daschle		Durbin	Moynihan		
Campbell	Mack	Dorgan		Feinstein	Murray		
Coats	McCain	Feingold		Glenn	Reed		
Cochran	McConnell	Ford		Graham	Robb		
Collins	Murkowski	Hollings		Harkin	Sarbanes		
Coverdell	Nickles	Johnson		Inouye	Torricelli		
Craig	Roberts	Kerrey		Kennedy	Wellstone		
D'Amato	Roth	Leahy		Kerry	Wyden		
Domenici	Santorum	Reid		Kohl			
Enzi	Sessions	Rockefeller					
Faircloth	Shelby						
Frist	Smith, Bob						
Gorton	Smith, Gordon						
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hagel	Thompson						
Hatch	Thurmond						
Helms	Warner						
Hutchinson							

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

accidentally fired and someone is killed or injured, the owner of that gun is a victim, not a criminal. The Durbin amendment, though, turns jurisprudence on its head by blaming the victim. The primary purpose for owning a handgun is self defense. In high-crime neighborhoods, many people understandably keep their handguns loaded. If gang members or other criminals suddenly enter their homes, they have a right to be ready to defend themselves. If they have teenage sons or daughters who also regularly enter and leave their homes, does that mean they must give up their right to self defense? Our colleagues amendment would say yes. Under this amendment, if someone's teenager brought a friend into the house, who found the gun and stole it, and then just showed it to other friends later, that gun owner would be charged with up to a \$1,000 fine and thrown in jail for up to 1 year. Our colleagues, of course, do not live in dangerous neighborhoods, nor do their friends or acquaintances. Their anti-gun theories do not put them or their families at risk. If it were their families that were being put at risk, we do not think our colleagues would be so cavalier about restricting the right of self defense.

In support of this amendment, some Senators have noted that 15 States have enacted laws similar to the Durbin amendment. We inform them that those laws have had almost no effect, because prosecutors very seldom will bring charges, and juries will very seldom bring in guilty verdicts, because everyone understands that the parents in such situations are in horribly tragic situations. Often, their children have stolen their guns to commit crimes. They are already victims, and they are already suffering incredible anguish over what their children have done. The children, usually teenagers, deserve punishment, but the parents themselves are victims and it would be cruel to punish them under such circumstances.

The proper approach to reducing gun violence is to punish the people who are guilty of committing gun crimes. Recent Congresses have followed that approach by passing very tough laws to punish people who use guns in the commission of crimes. Unfortunately, the Clinton Administration has been very lax in enforcing those laws. In the few instances that they have been applied, they have had dramatic results. For instance, the United States Attorney in Richmond informed local law enforcement officers that he was ready to federalize every possible gun crime case. He gave each police officer in Richmond a list of the gun felonies that had been federalized, and promised that he would prosecute without exception. As a result, within 1 year, the number of gun-related homicides in Richmond fell by two-thirds. A similar effort in Philadelphia has yielded equally impressive results. Therefore, as an alternative to the Durbin amendment, we have offered a Craig amendment that would increase Federal enforcement of existing laws that provide Federal prosecution for certain crimes committed with guns. That approach, unlike the "blame the victim" approach taken by the Durbin amendment, works. We understand that supporters of the Durbin amendment will agree to the Craig amendment, so we will not demand a rollcall vote, but it is still intended as an alternative. We urge our colleagues to support the Craig amendment, and to reject the Durbin amendment.

Those opposing the motion to table contended:

We believe that the Craig amendment and the Durbin amendment are complementary. Like the supporters of the Craig amendment, we would like to see more vigorous Federal enforcement of the laws that Congress has recently passed to federalize many crimes that are committed with guns. Along with enforcement, we would like to see stronger prevention efforts to keep guns out of the hands of people who should not have them, particularly children. To that end we have offered the Durbin amendment. The Durbin amendment would establish a national standard that would make every gun owner in America legally responsible for storing his or her gun safely. Under this amendment, if an adult kept a gun in the house, and knew or should have known that a child could gain access to it but still did not put the gun under lock and key or otherwise secure it, then that adult would be held responsible if a child got the gun and caused injury or death, or displayed the gun in a public place. Our colleagues say that this amendment would "blame the victim" in an unprecedented manner. We disagree. The "victim" would not be charged with any crimes committed with the gun. Instead, the "victim" would be charged with the crime that the "victim" committed--leaving a dangerous weapon within reach of a child. We think that the concept is the same as when a person owns a dangerous dog. If that dog is not kept securely tied up, and it bites someone, the owner is liable. Our colleagues say it is not the same because the owner is only liable if he or she knew the dog was dangerous. They say that the same applies with a gun; that the owners should not have to assume that every child who is able to get a gun will, and will present a danger to others. Our colleagues are wrong because adults should always be ready to assume responsibility for children who do not yet have the judgment of adults. Guns should be kept secure in all cases. If they are, we will be able to prevent the senseless tragedies that have been occurring recently, such as the shootings of students and a teacher in Jonesboro, Arkansas by an 11-year-old student and a 13-year-old student. The Durbin amendment simply advances the principle that people who own guns should take reasonable steps to keep them out of the hands of children, and that they should be held responsible if they fail in that regard. We urge our colleagues not to table this sensible amendment.